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No. 85-1481

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

THE STATE OF IOWA *ex rel.*
THOMAS J. MILLER,
Attorney General of Iowa,

and

DANNY GETTLER, *et al.*,

Petitioners,

vs.

RICHARD E. LYNG, Secretary of the
United States Department of Agriculture,
and THE UNITED STATES
DEPARTMENT OF AGRICULTURE,

Respondents.

JOINT REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

Cases	Page
Mitchell v. Block, 551 F. Supp. 1011 (W.D. Va. 1982).....	6
Rainwater v. United States, 356 U.S. 590 (1958).....	5
Statutes	
5 U.S.C. § 701 et seq.....	2
7 U.S.C. § 1427.....	4
7 U.S.C. § 1444d(b)(2)(D)...	8
7 U.S.C. § 2267 et seq.....	3
15 U.S.C. § 714.....	5
15 U.S.C. § 714b(c).....	2,8
Other	
S. Rep. No. 1022, 79th Cong. 1st Sess. (1948) as cited in 1948 U.S. Code Cong. Service, 2138.....	6,7

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

JOINT REPLY OF PETITIONERS

The central substantive issue presented in this petition for writ of certiorari is whether rules of the Secretary of Agriculture implementing

two congressionally authorized disaster programs for farmers are immunized from judicial review under the Administrative Procedure Act, 5 U.S.C. § 701 et seq. by a remote statutory provision barring injunctive actions against the Commodity Credit Corporation, 15 U.S.C. § 714b(c). The Secretary's opposition contains several mischaracterizations of the case that merit brief reply.

1. The Secretary's opposition does not fairly characterize the roles of the Secretary of Agriculture and the Commodity Credit Corporation (CCC) with respect to the Emergency Feed Program (EFP), and the Livestock Feed Program (LFP).

a. Congress vested authority with the Secretary of Agriculture, not the

Commodity Credit Corporation, to "implement an emergency feed program," 7 U.S C. § 2267(a). Congress authorized the Secretary of Agriculture, not the CCC, "to issue regulations as the Secretary determines necessary to carry out the provisions" of the section creating the EFP. 7 U.S.C. § 2267(e).

b. Congress sought to insure that the Secretary of Agriculture, and no one else, was responsible for the EFP by prohibiting the delegation of authority to administer the EFP to any other department, agency, or entity, public or private. 7 U.S.C. § 2267(g). The Congress further directed that "The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation (emphasis supplied)." 7 U.S.C. § 2267(e).

c. With respect to the Livestock Feed Program, which involves the distribution of government-owned grain at advantageous prices to drought stricken farmers, Congress provided that, "the Corporation, on such terms and conditions as the Secretary may deem in the public interest, may make available to any farm commodity or product thereof owned or controlled by it (emphasis supplied) . . ." 7 U.S.C. § 1427. The Congress further authorized the Secretary, and not the CCC, to determine whether because of a natural disaster, "an emergency exists which warrants such assistance." 7 U.S.C. § 1427.

2. The Secretary's attempt to characterize the plaintiffs' action as an effort to obtain "an injunction

against the CCC," Opposition at 5, is inaccurate.

a. The Commodity Credit Corporation is not a party to this action.

b. The plaintiffs have no dispute with the Commodity Credit Corporation. The Corporation is simply "an administrative device established by Congress for the purpose of carrying out the federal farm program with public funds." Rainwater v. United States, 356 U.S. 590, 592 (1958). The Corporation, by statute, is subject to "the general supervision and direction of the Secretary of Agriculture." 15 U.S.C. § 714. The plaintiffs are confident that the Corporation will faithfully follow the directives of the Secretary of Agriculture with respect to the EFP and LFP.

c. If the Secretary directs by rule or adjudication that any of the farmer-plaintiffs should receive benefits, the CCC will no doubt provide them in an efficient manner in response to superior authority as required by law. The plaintiffs here attack not the enlisted quartermaster, who distributes supplies based on rules, but the authority which establishes the rules. See Mitchell v. Block, 551 F. Supp. 1011 (W.D. Va. 1982).

d. This type of action is precisely what the APA authorizes -- review of final agency action by the highest authority -- and is wholly outside the scope of the anti-injunction provision that protects the CCC's administration of government-owned property from inter-meddling litigants. See S. Rep. No.

1022, 79th Cong. 1st Sess. (1948) as cited in 1948 U.S. Code Cong. Service, 2138, 2148 (anti-injunction act designed to prevent "hindrance or impairment of Corporation operations" from creditors and other persons).

3. The Secretary's own cross petition in this case in No. 85-1818 undercuts his claim that the question of whether the anti-injunction act applies to efforts to challenge final agency action of the Secretary is not worthy of review by this Court.

a. The Secretary has filed a cross petition in this case seeking review of a holding by the Eighth Circuit with requiring the Secretary to promulgate rules creating a third disaster program, the Special Disaster Payments Program

(SDPP), 7 U.S.C. § 1444d(b)(2)(D). According to the Secretary, the provisions of the anti-injunction act in 15 U.S.C. § 714b(c) should have prevented the Court of Appeals from ordering the Secretary to promulgate rules for the SDPP.

b. The Secretary cannot have it both ways. If the question of applicability of the anti-injunction provision is worthy of review with respect to the SDPP, it is also worthy of review with respect to the LFP and the EFP.

c. If this Court believes that the Secretary's petition for certiorari must be granted, it should also grant review of the applicability of the anti-injunction statute to the EFP and the

LFP in order to insure uniformity of decision.

4. The assertion of the Secretary that this Court's review is "not warranted" because of the lack of a split in the Court of Appeals understates the importance of the sweeping Court of Appeals' opinion.

a. If unreviewed, the farmers in seven key Midwestern and Great Plains states in the Eighth Circuit will be unable to challenge policy decisions made by the Secretary of Agriculture involving a wide variety of critical government programs administered by the CCC.

b. The doors of the federal court house should not be slammed shut without review by this Court. For better or

worse, the federal government is extensively involved in American agriculture. As government policy has penetrated the agricultural economy, farm families have reasonably come to believe that their well being, or lack of it, is increasingly dependent upon government decisionmaking. A decision like that of the Court of Appeals in this case that broadly refuses to consider challenges to government decisionmaking by people who at least perceive that they have surrendered significant control of their lives to government planners threatens to undermine confidence in the courts and our system of government in rural areas of our nation. A powerful government bureaucracy that defies the will of elected representatives and cannot be haled into court is an image consistent

with a Franz Kafka novel, not twentieth century America.

Respectfully submitted,

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